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August 22, 2016

VIA EMAIL AND FIRST CLASS MAIL

The Hon. Karen V. Gregory
Secretary of Federal Maritime Commission
800 North Capitol St.
Room 1046
Washington, D.C. 20573

Re: Docket No. 15-11 – Ovchinnikov v. Hitrinov

Dear Ms. Gregory:

Enclosed for filing in the above-captioned matter are an original true copy and five (5) additional copies of:

1. Respondents' Response to Complainants' Motion in the Guise of a Brief in Response

If you have any questions, please do not hesitate to contact me.

Best regards,

Anjali Vohra

Enclosures

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 15-11

IGOR OVCHINNIKOV, ET AL

v.

MICHAEL HITRINOV, ET AL

Consolidated With

DOCKET NO. 1953(I)

KAIRAT NURGAZINOV, ET AL

v.

MICHAEL HITRINOV, ET AL

**RESPONDENTS' RESPONSE TO COMPLAINANTS'
MOTION IN THE GUISE OF A BRIEF IN RESPONSE**

Pursuant to FMC Rules, 69, and 71, Respondents Empire Lines United and Michael Hitrinov hereby respond to Complainants' August 19, 2016 motion in the guise of a "brief in response."¹ While purporting to be a response (or a brief as Complainants improperly denominate their filings) in response to a motion made by Movant for Intervention Mr. Kapustin, Complainants repeatedly request that the Presiding Officer grant relief against numerous persons, including Counsel for Respondents. As such, this is by FMC rule a motion to which Respondents have a right to respond.²

¹ Formally named, "Complainants' Response to the Motion to Strike and Seal by Non-Party Sergey Kapustin."

² FMC Rule 69(a); 46 C.F.R. 502.69(a).

Respondents do not take sides in the battle between Mr. Kapustin and his former counsel Mr. Nussbaum/Katz as to which of them is the bigger liar or more mentally disturbed. Rather, we simply address major misstatements of law and fact made in Complainants' motion.³

Perhaps the most remarkable claim made by Complainants' Counsel is that "the material that Kapustin seeks to strike and seal are [sic] a *matter of public record*, in that said documents were exchanged in unrelated matters under color of no Order or Stipulation of Confidentiality." Page 4 (emphasis in original). This is simply an outright lie. As demonstrated in Mr. Kapustin's very motion to seal, as well as Respondents' own Motion to Correct the Record, the documents that Complainants attached as Appendix 3 – all marked "Confidential" – were submitted by Global under a Protective Order issued by Judge Reyes. Complainants Counsel cannot possibly plead ignorance of this Order (copies of which were attached to Mr. Kapustin's motion as well as our own), as he was Mr. Kapustin's counsel at the time and represented him in the "unrelated" litigation. That Protective Order by its terms applies to Appendix 3 even after termination of that litigation. As Complainants have not, and cannot, produce any subsequent Order by Judge Reyes modifying the Protective Order, Complainants' Counsel are in clear violation thereof.

Respondents are entirely baffled by Complainants' claim that Mr. Kapustin's Affirmation was prepared by a "lawyer." The most appropriate response would seem to be, "well, duh." Although it was certainly not the undersigned who prepared Mr. Kapustin's Affirmation, as addressed further below, we would naturally assume that some lawyer participated in its preparation. That is what lawyers do. Almost all affidavits, declarations, affirmations, written testimony, etc. filed at the FMC or in court are prepared by lawyers, including Complainants'

³ We ignore more minor gaffes, such as the suggestion that Administrative Law Judges at the FMC have the authority to "fine" parties or lawyers in complaint cases.

own Complaint in this case and the signed statements of Complainants attached to Complainants' Shipping Documents submitted on May 4, 2016 (Pgs. 37-38, 63, and 74). There has never been any requirement – anywhere to our knowledge – that an affirmant prepare an Affirmation by him or her self. Nor does a lawyer have to file an appearance before the Commission or court before assisting a party (or would-be party). This is simply a non-sequitur leading nowhere.

We are equally puzzled by Complainants' repeated references to Mr. Kapustin's waiver of attorney client privilege as if it has some bearing on this matter. Complainants' Counsel have not provided, and we doubt that they could find, any precedent for the proposition that a waiver of the attorney-client privilege has any affect on either the duty of loyalty to past clients or the Protective Order issued by Judge Reyes. This is just another non-starter.

We are deeply amused by Complainants' statement that pleadings should be sealed "to the extent that they contain scurrilous, libelous, slanderous, and wholly unfounded accusations." Page 3. Even apart from the legal facts that written material cannot be "slanderous" and that judicial pleadings are exempt from the laws on defamation, application of that standard would result in virtually all of Complainants' filings being placed under seal, their instant "brief" not excepted. As a legal matter, we do not doubt the authority of the Presiding Officer to strike or seal any such material pursuant to his general authority to control the pleadings.

Finally, we address the bizarre claims of "collusion" made by Complainants. First, Complainants allege some sort of unspecified collusion between the undersigned and Mr. Werner. Aside from the use of a perjorative word, Counsel for Complainants makes not the slightest effort to show that there is something wrong with consultation between counsel for a

party and that party's regular counsel. That happens thousands of time each day. Attorneys consult with their clients' in-house counsel, with their coordinating litigation counsel and/or with their regular counsel all the time. Of course I communicate, albeit infrequently, with Mr. Werner, and he reviews and sometimes comments on, major filings. Mr. Werner also helps provide me with documents (none subject to a protective order, however) and factual guidance. If that is wrong, then all litigators everywhere are operating in violation of some unwritten law that seems to exist only in the hyperactive imaginations of Mr. Nussbaum/Katz.

As to collusion with Mr. Kapustin, I can categorically state that I:

- Have never prepared or been involved in the preparation of any document filed by Mr. Kapustin. Nor have I even seen any document filed by Mr. Kapustin prior to receipt as an email copy recipient of the filing to the Commission, on which Complainants' Counsel were also copied.
- Have never communicated with Mr. Kapustin orally or in writing, except to the extent that he was a copy recipient on one or two filings I submitted to the FMC relating to Mr. Kapustin, or I was a copy recipient on filings made by Mr. Kapustin, on all of which Complainants' Counsel were also copied.
- Did not send to Mr. Kapustin Complainants' Response to his Motion to Intervene, nor do I have any idea who did. I note, however, that as I understand the FMC Rules, Mr. Kapustin *should* have been served by Complainants with a copy of that Response.⁴

Thus, even apart from Complainants' abject failure to show that there would be anything wrong if I had provided assistance to Mr. Kapustin, I did not do so. Complainants' wild and baseless assertions may be supported by the "belief" of Complainants' Counsel (whether rational or not), but they are in no way supported by any "information."

⁴ I acknowledge that Respondents too failed to serve their response regarding intervention on Mr. Kapustin. In our case, however, it was an oversight by the undersigned, not an intentional decision to withhold service.

CONCLUSION

For the foregoing reasons, Respondents aver that the Presiding Officer should deny Complainants' frivolous motion insofar as it relates to Respondents' Counsel.

Respectfully submitted,

A handwritten signature in cursive script, reading "Eric Jeffrey Anjali Vohra", written over a horizontal line.

Eric Jeffrey

Anjali Vohra

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Respondents' Response to Complainants' Motion in the Guise of a Brief in Response by email and first class mail to the following:

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P.O. Box 245599
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Marcus.nussbaum@gmail.com

Seth M. Katz, Esq.
P.O. Box 245599
Brooklyn, NY 11224

Dated at Washington, DC, this 22th day of August, 2016.



Anjali Vohra
Counsel for Respondents